



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,830	03/23/2001	William Vance Fouraker	41556/03960 (RSI1P017)	6403

22428 7590 10/19/2004

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

GORT, ELAINE L

ART UNIT PAPER NUMBER

3627

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,830

Applicant(s)

FOURAKER ET AL. *sf*

Examiner

Elaine Gort

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2004.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) 1-6 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 7-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/30/03; 1/22/03.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: IDS: 10/24/02; 9/7/01.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 7-18 in Paper No. 8/3/04 is acknowledged.

Claims 1-6 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 8/3/04.

Double Patenting

2. Claims 7-18 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of the following of copending applications. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

09/815559
09/815590
09/815660
09/815688
09/815727
09/815729
09/815731
09/815734
09/815759
09/815792
09/815813
09/815864
09/815894
09/815899
09/816033
09/816075
09/816083
09/816092

Art Unit: 3627

09/816151
09/816160
09/816167
09/816203
09/816212
09/816285
09/816331
09/816357
09/816358
09/816388
09/816412
09/816420
09/816429
09/816431
09/816434
09/816454
09/816455
09/816495
09/816503
09/816507
09/816536
09/816555
09/816560
09/816561
09/816567
09/816582
09/816881
09/816922
09/816944

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 7-12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Current office policy regarding method claims disclosed as requiring a computer but not claiming the use of a computer is to consider the claimed subject matter as non-statutory for failing to fall within the technological arts. Claims must be tied to a technological art. Tying the method to a computer would overcome this rejection.

5. Claims 7-18 are rejected because they lack patentable utility. Claims 7-18 merely claim the manipulation of data ("logic for" or "code for") but perform no concrete, useful or tangible result. One example of how this rejection may be overcome is by positively claiming the generation of a report or output of data.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 11, 12, 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 recites the limitation "the stores" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the stores" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 17 recites the limitation "the stores" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 18 recites the limitation "the stores" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 7, 11, 12, 13, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shavit et al. (US Patent 4,799,156).

Shavit et al discloses the claimed system/computer program product for tracking a performance of suppliers, comprising: Logic for/Code for registering a plurality of suppliers (users are subscribers and thus inherently are registered); Logic for/Code for receiving data utilizing a network, the data relating to the supply of goods to a plurality of distributors by the registered suppliers (such information relating to an order, shipment information, quantity available, etc...); and Logic for/Code for tracking a performance of the registered suppliers utilizing the data (such as the tracking of an order).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 8-10 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al. (US Patent 4,799,156) in view of Examiner's Official Notice.

Shavit et al. discloses the claimed system/computer program product but is silent regarding the tracking and comparison of inventory levels of suppliers.

Examiner takes Official Notice that it is old and well known in the art of procurement for purchasers to obtain inventory level information from suppliers and look at supplier's market share in comparison to other suppliers in order to determine availability of inventory and to select a supplier with adequate supply.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the system of Shavit et al. with the supplier inventory levels and comparisons of the Examiner's Official Notice, in order to provide buyers with the ability to determine availability of inventory and to select a supplier with adequate supply.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elaine Gort whose telephone number is (703)308-6391. The examiner can normally be reached on Monday through Thursday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703)308-5183. The fax phone number for the organization where this application or processing is assigned is (703)305-7687.

Art Unit: 3627

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

A handwritten signature in black ink, appearing to read 'Elaine Gort', with a long horizontal stroke extending to the right.

Elaine Gort
Examiner
3627

October 15, 2004